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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,933	01/16/2004	Johann Heinrich Cuhls	AUS920030598US1	8215
7590 Barry S. Newberger 1201 Main Street P.O. Box 50784 Dallas, TX 75250-0784		02/11/2008	EXAMINER JOSEPH, TONYA S	
			ART UNIT 3628	PAPER NUMBER PAPER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,933	<b>Applicant(s)</b> CUHLS ET AL.
	<b>Examiner</b> TONYA JOSEPH	<b>Art Unit</b> 3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 November 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1, 6, 8-9, 12, 14, 16-17, 22 and 24 have been amended. No claims have been cancelled. No claims have been added. Thus claims 1-24 are again presented for Examination.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 1, 9 and 17 recite the limitation, "the queue order information comprises a patron-selectable set of queue order information, the patron-selectable set including the current estimated time remaining and the current position of the patron in the queue" It is unclear what information is patron-selectable. As the claim is currently presented, one can interpret that ***the transmitted information comprises queue order information that is selectable by a patron*** or that a patron chose to have the particular information transmitted to them. Furthermore Applicant's use of the term "selectable" implies that the information need not be selected at all.

5. Applicant's specification does little to clarify this portion of claim language with the recitation, "*In step 240, the time estimate is transmitted to the patron using the patron's contact information supplied by the patron when entered into the queue. Note that additional information may be provided, such as the patron's position in the queue. Moreover, it would be appreciated by those of ordinary skill in the art, that the information, such as the remaining time, or queue position may, alternatively, be selectable by the patron. As previously described, this information may be patron selectable, by, for example, a web page form, e-mail message or similar mechanism, as would be recognized by persons of ordinary skill in the art.*" (see para. 29). Applicant's specification is also unclear as to what is selectable. In the above cited recitation it appears as though the method by which a patron receives information is selectable and possibly the information. It is therefore unclear what is being claimed despite the positively recited limitations, and the public is not properly apprised as to what would constitute infringement of these claimed embodiments. For Examination purposes, Examiner is interpreting the queue order information comprises: the current estimated time remaining and the current position of the patron in the queue as meeting the limitations of the claim.

6. Claim 4 recites the limitation, wherein the steps (a), (b) and (c) are repeated at a pre-selected notification criterion, and wherein a *pre-selected notification interval comprises a patron-selected notification criterion*. Claim 5 then recites the limitation of *a patron-selected notification criterion comprises a pre-selected notification criterion*. It is unclear how Claim 4 from which Claim 5 is dependant from can be a subset of Claim 5

and at the same time maintain its limitation. Furthermore the claim language in general is unclear as to what Applicant seeks protection. For Examination purposes, Examiner is interpreting wherein the steps (a), (b) and (c) are repeated at a pre-selected notification criterion and wherein the patron-selected notification criterion comprises one of a set including a pre-selected notification time to meet the limitation of the claims, respectively.

7. All dependent claims inherit the deficiencies through dependency, and as such are rejected for the same reasons.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. As per Claims 1, 9 and 17, Paxton teaches, (a) determining a current position of a patron in a queue (see para. 54 lines 1-7); (b) determining a current estimated time remaining for said patron using the current position of the patron (see para. 54 lines 1-7) and a selected set of historical data (see para. 24 lines 10-13); and (c) transmitting queue order information to the patron using a pre-selected communication channel (see para. 10 lines 3-11 and para. 24 lines 4-6); the queue order information comprises the estimated time remaining and the current position of the patron in the queue (see para. 59 lines 1-3; para. 54 lines 2-5; para. 56 lines 9-15 and para. 73 lines 1-5).

10. As per Claims 4, 12 and 20, Paxton teaches the method of claim 1 as described above. Paxton further teaches wherein the steps (a), (b) and (c) are repeated at a pre-selected notification criterion (see para. 56 lines 9-24).

11. As per Claims 5,13 and 21, Paxton teaches the method of claim 1 as described above. Paxton further teaches wherein the patron-selected notification criterion comprises a pre-selected queue position (see para. 24).

12. As per Claims 6, 14 and 22 Paxton teaches the method of claim 1 as described above. Paxton further teaches (d) notifying the patron upon reaching a head of the queue using the communication channel (see para. 67 lines 6-10, Examiner is interpreting the display on the device id, used to notify the patron of the ride gate entrance as notifying the patron upon reaching a head of the queue using the communication channel); (e) in response to the patron failing to respond after an expiry of a predetermined time interval after step (d), moving the patron to another position within the queue (see para. para. 31), Examiner is interpreting a patron failing to respond in the affirmative that they will make it back to a ride on time as, the patron fails to respond after an expiry of a predetermined time interval after step).

13. As per Claims 7, 15 and 23 Paxton teaches the method of claim 6 as described above. The limitation "wherein the another position within the queue is an end of the queue" purports to further limit the recited optional language as identified in claim 1. As above in claim 1 this limitation is only afforded patentable weight to the extent that it imparts a manipulative difference of the claimed invention, which are met by the teachings of Paxton para. 31.

14. As per Claims 8, 16 and 24, Paxton teaches the method of claim 1 as described above. in response to the patron being at the head of the queue, determining if the patron can be accommodated; and (e) in response to the patron not being accommodated, interchanging the current position of the patron and position of a next patron in the queue" is considered optional language not required by the claim, Paxton teaches this limitation in para. 67 lines 16-25 and para. 73 lines 6-10.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claims 2,10 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Paxton et al. U.S. Pre-Grant Publication No. 2002/0007292 A1 in view of Thangavelu U.S. Patent No. 4,838,384.

17. As per Claims 2, 10 and 18, Paxton teaches the method of claim 1 as described above. Paxton further teaches the method of claim 1 as described above. Paxton further teaches wherein the set of historical data comprises a queue servicing rate for a preceding time interval (see para. 24 lines 10-13), Paxton does not explicitly teach the estimated time remaining determined using a linear extrapolation with said queue servicing rate. Thangavelu teaches estimated time remaining determined using a linear

extrapolation with said queue servicing rate (see Col. 13 lines 25-29. It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the method of Paxton to include the teachings of Thangavelu to estimate the average arrival passenger rate, as taught in Thangavelu Col. 13 lines 25-29.

18. Claims 3, 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paxton et al. U.S. Pre-Grant Publication No. 2002/0007292 A1 in view of Thangavelu U.S. Patent No. 4,838,384 in further view of Holland et al. U.S. Pre-Grant Publication No. 20020143605.

19. As per Claims 3, 11 and 19, Paxton in view of Thangavelu teaches the method of claim 2 as described above, Paxton further teaches wherein the queue servicing rate comprises a rate at which patrons have been served between a current time and a preceding notification time (see para. 24 lines 16-20) and Paxton does not explicitly teach wherein the set of historical data further comprises seasonal average patron service rates. Holland teaches the set of historical data further comprises seasonal average patron service rates (see para. 7). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the method of Paxton and Thangavelu to include the teachings of Holland to track service demand on a seasonal basis, as taught by Holland para. 7.

#### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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